

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
J. S. GARNETT COMPANY }

Appearances:

For Appellant: J. S. Garnett, President of said corporation;
Murdo MacKenzie of San Francisco
For Respondent: Albert A. Manship, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the California Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of J. S. Garnett Company against a proposed assessment of an additional tax of \$848.40 based upon a report filed by the corporation for the period ended August 31, 1929.

Two grounds of error are urged by the Appellant, viz., (one) the failure of the Commissioner to allocate any of the income of the corporation as arising from business done outside of California, and, (two) the failure of the Commissioner to accept the value claimed by the corporation as of January 1, 1928, on certain property acquired prior to then and disposed of in 1929.

So far as the first claim of error is concerned we find no substantial difference in the facts which were before our Board at the time that the company appealed from the action of the Franchise Tax Commissioner in proposing an additional tax based upon its net income for the year ended December 31, 1928. J. S. Garnett Company is a California corporation engaged in sheep and wool ranching in Glenn County with its business office in San Francisco. All of the produce has been sold in California, in most instances to firms maintaining their principal offices in the middle west and shipping the lambs to Chicago and other out of state points. While in some instances the Appellant may have consigned some of its produce to these firms outside of California it is clear that negotiations leading up to the sales were had in this state and that the business was essentially California activity.

Therefore, we must conclude as we did in our opinion in the matter of the earlier Appeal of J. S. Garnett Company (filed February 24, 1931), that the taxpayer is not engaged in business outside of California so as to be entitled to an allocation of a portion of its income to out of state activity. The arguments against the application of the law as made by the Appellant relate to matters of policy over which we, as administrative officers, have no control. We must apply the law as we find it

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and we are not permitted to moderate the imposition of the tax because it may appear to place an unduly heavy burden upon our local industries.

The second point urged on appeal involves the question of the valuation of certain parcels of land on Andrus Island, Sacramento County, as of January 1, 1928. There is no dispute concerning the facts. It appears that this interest had belonged to the Garnett family prior to the incorporation of the Appellant, which is a family corporation, in 1910 and that the cost of this one-half interest was set up on the books of the taxpayer as \$26,268.67. The tract in which the Appellant had the one-half interest consisted of 257 acres of delta land suitable principally for growing celery and asparagus and not desirable for use in the business of sheep raising in which the Appellant was engaged.

Because of these conditions and also of the fact that the land is approximately 100 miles distant from the taxpayer's ranch in Glenn County so as to make economical supervision impractical, the Appellant desired to dispose of its interest in the land at a sacrifice, if necessary, but owing to the ownership of a one-half interest by another party the transaction was delayed. Finally in January, 1929, the entire property was sold for \$36,582.74, so that the amount received by the taxpayer for its one-half interest was \$18,291.37. It appears that the sale was made at a sacrifice because of the conditions above stated and also that land values in the section in which the property is situated were adversely affected by unsettled market conditions beginning in the summer of 1928. As the taxpayer was of the opinion that the value of the land in January, 1928, was in excess of its value in 1910, as appearing on the books of the corporation, it did not have an appraisal made at the time of preparing its franchise tax return covering the period during which the property was sold and, therefore, used the cost of the one-half interest, \$26,268.67, as the basis for ascertainment of the loss on the sale. This loss was disallowed by the Commissioner who stated that the sale price of \$18,291.37 must be presumed to represent the January 1, 1928, value.

It is well known that there must be a serious shrinkage in the value of farm properties since the first of 1928 and that in certain types of holdings this shrinkage has been particularly pronounced. Among the properties so affected delta lands of the type in question were conspicuous examples of the effect of the decline of commodity prices on land values. At the oral hearing our attention was directed to appraisals made of this property by two disinterested parties residing in the vicinity and familiar with real estate appraisals. Each of these men has lived in that section of the state for many years and should be well qualified to determine land valuations. Their appraisals are entitled to careful consideration by our Board.

One of the appraisers, Mr. J. W. Gardiner of Isleton, has stated that as of January 1, 1928, the fair market value of the land in question was \$300.00 per acre, while the other, Mr.

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John McCormack of Rio Vista, has placed its value as of that date as \$225.00 per acre. An average of these appraisals was used by the Appellant in determining the fair market value of its one-half interest in the tract at \$33,731.25 as of January 1, 1928.

We believe that the valuation of this property on such a basis was justified and that in view of these appraisals the Appellant should not be limited to the valuation of the property at \$26,268.67 as originally claimed in its report to the Commissioner, but that its loss upon the sale of the land should be considered to be the difference between the average of the appraisals, viz., \$33,731.25 and the \$18,291.37 received at the sale in 1929. Shrinkages in value of farm lands to this extent unfortunately have not been uncommon during the period of economic depression. Moreover, it must be borne in mind that the Appellant was anxious to dispose of the property even at a sacrifice on account of the circumstances to which we have above referred. No evidence has been adduced by the Commissioner tending to disprove in any way the appraisals placed upon this land by Mr. Gardiner and Mr. McCormack and as we have already indicated we think that their judgment is entitled to great weight. In our opinion the loss should be allowed in the calculation of the net income of the taxpayer pursuant to the provisions of Section 19 of the Act.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of J. S. Garnett Company, a corporation, against a proposed assessment of an additional tax in the amount of \$848.40, based upon the net income of said corporation for the period ended August 31, 1929, be and the same is hereby modified, to the end that said Commissioner is sustained in his denial of allocation of any of said income to business done outside of California but that said Commission is reversed because of his failure to allow a deduction from the gross income of said corporation on account of a loss sustained in the sale of certain property acquired prior to January 1, 1928. Said loss is hereby determined at \$15,439.88 and the correct amount of the tax is hereby determined as the amount produced by means of a computation which will include the allowance of such a loss in the calculation thereof. The Commissioner is hereby directed to proceed in conformity with this order and to send the taxpayer a notice of assessment revised accordingly.

Done at Sacramento, California, this 14th day of May, 1931,
by the State Board of Equalization.

Jno. C. Corbett, Chairman

R. E. Collins, Member

H. G. Cattell, Member

Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary